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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,763	08/25/2003	Dwight J. Smith	228 P002	2787

7590 02/09/2006

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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/647,763		SMITH, DWIGHT J.	
	Examiner		Art Unit	
	Gary E. Elkins		3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 9-22, 27-29, 45 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 23-26, 30-44 and 47-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20030826</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, Figs. 9 and 10 in the reply filed on 22 August 2005 is acknowledged.
2. It is noted that claims 27-29 are listed within the response as readable upon the species of figs. 9 and 10. However, no description of at least one opening in the bottom panel as specifically defined in claims 27-29 can be found relative to the figs. 9 and 10 embodiment. The only disclosure of at least one bottom opening as defined within these claims is shown and described with respect to the fig. 5 embodiment. As such, claims 27-29 are also withdrawn from prosecution. It is also noted that, e.g. claim 1 is considered a subcombination claim common to each of the species and not a generic claim (see MPEP 806.04(d)). However, the requirement will be withdrawn with respect to any claim properly dependent upon or otherwise including all the limitations of any claim which may be found allowable.
3. Claims 9-22, 27-29, 45 and 46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 4, 7, 23-26, 30-39, 42 and 47-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood. Wood discloses a tray including side panels 18, 19, bottom and top panels 17, 21, vertical support member 37 extending from the top panel to the bottom panel and means 54, 55, 59, 63 for engaging the door of a vehicle. With respect to claims 30-39, it is noted that each of the side, top and bottom panels includes a flat area capable of receiving promotional material and printed promotional material. With respect to claim 47, the tray in Wood is collapsible when the support member is in a disengaged position (and when other portions of the tray are disengaged as well). Also, the tray is capable of being collapsed when the support member is disengaged by stepping on the tray with one's foot and subsequently throwing it away.

6. Claims 1, 3, 4, 7, 23, 26, 30-42, 44 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Kolander (either emb.). Kolander discloses a tray including side panels 16, 18, bottom and top panels 19, 17, vertical support member 26 extending from the top panel to the bottom panel, connecting panel 36 and means 32, 36 for engaging the door of a vehicle. With respect to claims 30-39, it is noted that each of the side, top and bottom panels includes a flat area capable of receiving promotional material and printed promotional material. With respect to claim 47, the tray in Kolander is collapsible when the support member is in a disengaged position (and when the other support member 26 of the tray are disengaged as well).

7. Claims 1, 3-5, 7, 26, 30-42, 44 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Forbes, Jr. Forbes, Jr. discloses a tray including side panels 11, 15, bottom and top panels 13, 17, vertical support member 53 extending from the top panel to the bottom panel and connecting panel 19. With respect to claims 30-39, it is noted that each of the side, top

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and bottom panels includes a flat area capable of receiving promotional material and printed promotional material. With respect to claim 47, the tray in Forbes, Jr. is collapsible when the support member is in a disengaged position (and when other portions of the tray are disengaged as well). Also, the tray is capable of being collapsed when the support member is disengaged by stepping on the tray with one's foot and subsequently throwing it away.

8. Claims 1, 3-7, 26, 30-42, 44 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Goings '650 (fig. 3 emb). Goings '650 discloses a tray including side panels 14, 16, bottom and top panels 34, 12, vertical support member 70 extending from the top panel to the bottom panel and connecting panel 36. With respect to claims 30-39, it is noted that each of the side, top and bottom panels includes a flat area capable of receiving promotional material and printed promotional material. With respect to claim 47, the tray in Goings '650 is collapsible when the support member is in a disengaged position (and when other portions of the tray are disengaged as well). Also, the tray is capable of being collapsed when the support member is disengaged by stepping on the tray with one's foot and subsequently throwing it away.

9. Claims 1, 3-8, 26, 30-42, 44 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Goings '445. Goings '445 discloses a tray including side panels 33, 45, bottom and top panels 26, 16, vertical support member 21 extending from the top panel to the bottom panel and connecting panel 39 or 42b for engaging the door of a vehicle. With respect to claims 30-39, it is noted that each of the side, top and bottom panels includes a flat area capable of receiving promotional material and printed promotional material. With respect to claim 47, the tray in Goings '445 is collapsible when the support member is in a disengaged position (and when other portions of the tray are disengaged as well). Also, the tray is capable of being

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collapsed when the support member is disengaged by stepping on the tray with one's foot and subsequently throwing it away.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Kolander, Forbes, Jr., Goings '650 or Goings '445, each in view of either Gnadt et al or Fultz et al. Each of Kolander, Forbes, Jr., Goings '650 and Goings '445 discloses all structure of the claimed tray except formation of the tray from e-flute corrugated board. Each of Gnadt et al and Fultz et al teaches that it is known to make a foldable container from e-flute corrugated board. It would have been obvious to make the container in any one of Kolander, Forbes, Jr., Goings '650 or Goings '445 from e-flute corrugated board as taught by either Gnadt et al or Fultz et al since e-flute corrugated board is stronger than standard paperboard or cardboard and is of lesser thickness than other types of corrugated board. E-flute corrugated board is well known as a foldable paperboard material in this art.

12. Claims 2, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood in view of either Gnadt et al or Fultz et al. Wood discloses all structure of the claimed tray except formation of the tray from e-flute corrugated board (cls. 2 and 43) or from a recyclable material (cl. 44). Each of Gnadt et al and Fultz et al teaches that it is known to make a foldable container from e-flute corrugated board. It would have been obvious to make the

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container in Wood from e-flute corrugated board as taught by either Gnadt et al or Fultz et al since e-flute corrugated board is strong than standard paperboard or cardboard and is of lesser thickness than other types of corrugated board. E-flute corrugated board is well known as a foldable paperboard material in this art and is capable of being recycled.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

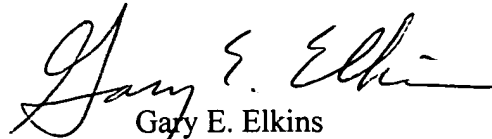
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

A handwritten signature in cursive script, reading "Gary E. Elkins".

Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
06 February 2006